

REMARKS

This is a full and timely response to the Office Action mailed March 25, 2005, submitted concurrently with a two month Extension of Time after the Notice of Appeal filed September 26, 2005, to extend the due date for response to January 26, 2006.

By this Amendment, claims 1, 3, 5, 7-10 and 12 have been amended to put the claims in better form. Further, new claim 13 has been added in view of the amendment to claim 10. Support for the claim amendments and new claim can be found throughout the specification and the original claims. Claims 1, 3, 5, 7-10 and 12-13 are pending in this application.

Applicant notes that these claim amendments have been presented based on the understanding that the Amendment filed September 26, 2005 will not be entered.

Also, Applicant wishes to thank the Examiner for her consideration and cooperation during the telephone interviews.

In view of these amendments, Applicant believes that all pending claims are in condition for allowance. Reexamination and reconsideration in light of the above amendments and the following remarks is respectfully requested.

Objection to the Claims

Applicant has amended claims 1, 8 and 9 to address each issue raised by the Examiner. Specifically, claims 1, 8 and 9 have been amended to render moot the Examiner's concerns.

Rejections under 35 U.S.C. §112

Claims 1, 3, 5 and 7-12 are rejected under 35 U.S.C. §112, second paragraph, for alleged indefiniteness. Applicant respectfully traverses this rejection.

However, in order to expedite prosecution, Applicant has amended claims 1, 3 and 7 to clarify the claimed invention and to address the Examiner's concerns. Specifically, claim 1 has been amended to delete the term "using". Further, claim 3 does not need to be amended to clarify the presence of the promoter CaMV35S since vectors, pIG121Hm or pBigrz, have been deleted from claim 1 and the promoter CaMV35S has been deleted from claim 3. Also, claim 7 has been amended to be in independent form thereby overcoming the Examiner's concerns.

Thus, in view of these claim amendments, withdrawal of this rejection is respectfully requested.

Claims 1, 3, 5 and 7-12 are rejected under 35 U.S.C. §112, first paragraph, for allegedly lacking written description of the claimed invention. Applicant respectfully traverses this rejection.

However, in order to expedite the allowance of the present application, Applicant has amended the claims to direct to a “*polynucleotide comprising the base sequence of SEQ ID NO. 3*” which Applicant believes satisfy the written description requirement under U.S. practice.

Thus, withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. §103

Claims 1, 3, 5 and 7-12 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Satoshi et al. (EP 0 860 499) in view of Hiei et al. (U.S. Patent 5,591,616). Applicant respectfully traverses this rejection.

To establish a *prima facie* case of obviousness, the prior art references must either alone or in combination teach or suggest the invention as a whole, including all the limitations of the claims. Here, Satoshi et al., either alone or in combination with Hiei et al., fails to teach or suggest the limitation “*an isolated polynucleotide comprising the base sequence of SEQ ID NO. 3*”.

Satoshi et al. only teaches the amino acid sequences of SEQ ID NO: 1 and 2, and their respectively cDNA sequences. Satoshi et al., either alone or in combination with Hiei et al., clearly does not teach or suggest a “*an isolated polynucleotide comprising the base sequence of SEQ ID NO. 3*”.

Thus, withdrawal of this rejection is respectfully requested.

CONCLUSION

For the foregoing reasons, all of the claims now pending in the present application are believed to be clearly patentable over the outstanding rejections. Accordingly, favorable reconsideration of the claims in light of the above remarks is courteously solicited. If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

Dated: January 26, 2006

Respectfully submitted,

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Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 180013 for any such fees; and applicant(s) hereby petition for any needed extension of time.